

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5681 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

PARSHOTTAMBHAI AMBUBHAI AHIR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5681 of 1990
MR S TRIPATHY for Petitioner No. 1-9 - Absent
MR SP HASURKAR, AGP for Respondent No. 1
MR PRASHANT G DESAI for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 30/09/2004

ORAL JUDGEMENT

#. The petitioners seek a direction on the respondent-authorities to vary the Town Planning Scheme

of (Udhna Majura - Preliminary) and permit the petitioners to continue the occupation of their lands with buildings. They also pray for restraining the respondents not to evict them from the land with houses till they are given land in exchange of their presently occupied land. When Rule was issued on this petition on 4.10.1990, interim relief was refused by a Division Bench of the Hon'ble Mr.Justice G.T.Nanavati and Mr.Justice B.C.Patel.

#. According to the petitioners, they have not been given individual notices and, therefore, principles of natural justice were violated. It is also contended that the plots nos. 25, 33 and 34 were occupied by different persons and, therefore, the petitioners as owners of their old survey no.2 cannot be asked to vacate that land until they get land in exchange.

#. Preliminary Scheme had already come into force with effect from 4.3.1989. Therefore, as per provisions of section 67(b) of the Gujarat Town Planning & Urban Development Act, 1976, all rights in the original plots which were re-constituted into final plots came to an end. Therefore, the petitioners' right in the original plot no.2 did not survive after the preliminary Scheme came into force. In this view of the matter, the petitioners cannot claim any protection of the possession of their old plot. Therefore, notice dated 10.7.1990 was validly issued on the petitioners under Section 68 of the said Act read with Rule 33 of the Rules framed thereunder. The validity of the said notice at Annexure:F has not even been challenged in the prayer clause.

#. The petitioners cannot insist to retain the possession of the old plot in respect of which their rights came to an end. A Division Bench of this Court in Chhaganbhai Motibhai Bhoi and another v. Anand Area Development Authority and another, reported in 30(2) G.L.R. 912, repelling the argument to the effect that the adjustment should be made either for continuing the petitioners in the land in dispute or providing them with alternative accommodation, held in para-9 of the judgment, that, if such an interpretation has to be given, the entire Town Planning Scheme will become futile and no Town Planning Scheme can be executed.

#. As regards the contention that individual notices were not given, the aspect is fully covered by the settled legal position reflected in the decision of this Court in Shilpa Park Co-operative Housing Society v.

Surat Urban Development Authority and others, reported in 1996 (2) G.L.R. 707, in which, after taking into consideration the earlier decisions of this Court and of the Apex Court, it was held that Section 52(1)(i) of the Act only provided for giving notice to the persons affected by the Scheme and it did not provide for notice to each and every interested person.

#. As regards the prayer for variation of the Scheme, the power to vary the Scheme on the ground of error, irregularity or infirmity is laid down in Section 70 of the Act and there is no occasion for this Court to issue a direction straightaway to the concerned authorities to vary the Scheme. There is no warrant to infer that the proper procedure for making the preliminary Scheme effective was not followed.

#. Since the impugned action of evicting the petitioners was taken in consonance with the provisions of Section 67 of the said Act read with Rule 33 and no ground for directing any variation in this petition is made out, the petition is rejected. Rule is discharged with no order as to costs.

[R.K. ABICHANDANI, J.]

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